

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Christian Television Network, Inc.)	
)	CSR-6121-M
v.)	
)	
Galaxy Cable, Inc.)	
)	
Request for Mandatory Carriage of)	
Television Station WCLF-TV, Clearwater, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: July 18, 2003

Released: July 22, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Christian Television Network, Inc. (“CTN”), licensee of television broadcast station WCLF-TV, Clearwater, Florida (“WCLF” or the “Station”) filed the above-captioned must carry complaint against Galaxy Cable, Inc. (“Galaxy”) for failing to carry WCLF on its cable system serving the Tampa-St. Petersburg-Sarasota, Florida Designated Market Area (“DMA”).¹ Galaxy filed an Opposition to this complaint, to which CTN replied.

II. BACKGROUND

Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* (“*Must Carry Order*”), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A station’s market for this purpose is its “designated market area,” as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of others, based

¹ Complaint at 1.

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission’s rules requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e).

on measured viewing patterns.

2. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁶

III. DISCUSSION

3. In support of its complaint, WCLF states that it is licensed to Clearwater, Florida, which is in the Tampa-St. Petersburg-Sarasota, Florida DMA.⁷ It states further that Galaxy's cable television system is also located in the Tampa-St. Petersburg-Sarasota DMA.⁸ WCLF contends that because it is located within the same DMA as the Galaxy cable system is entitled to mandatory carriage on Galaxy's system.⁹ WCLF asserts that on August 23, 2002, it notified Galaxy of WCLF's mandatory carriage election.¹⁰ It asserts further the on January 31, 2003 it formally demanded Galaxy to commence carriage of its signal, but that Galaxy denied carriage of the Station arguing that it was not obligated to carry the WCLF signal because WCLF failed to provide a good quality signal to Galaxy's principal headend.¹¹ WCLF maintains that the signal strength measurements Galaxy used to deny WCLF carriage are incomplete and flawed because Galaxy failed to use good engineering practices.¹²

4. In its Opposition, Galaxy contends that WCLF is not entitled to carriage because the Station does not provide a good quality signal to Galaxy's cable system due to the distance between WCLF's transmitter and Galaxy's principal headend.¹³ Galaxy states that signal strength tests it conducted on January 24, 2003, showed that WCLF did not meet the minimum threshold of -45 dBm established by the Commission's rules and, as a result, it did not deliver a good quality signal to Galaxy's

⁴ See *Must Carry Order*, 8 FCC Rcd at 2990.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ *Must Carry Order*, 8 FCC Rcd at 2991.

⁷ Complaint at 1.

⁸ *Id.*

⁹ *Id.* at n.2.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2 and Exhibit C.

¹² *Id.* Section 76.61(a)(2) of the Commission's rules states that if a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to take the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue. 47 C.F.R. § 76.61(a)(2).

¹³ Opposition at 1.

principal headend located in Nobleton, Florida.¹⁴ Galaxy states that further signal strength testing on April 8, 2003, revealed readings of -47.2 dBm, -47.3 dBm, -47.4 dBm and -50.7 dBm and, that as a result, it conducted additional testing on April 15, 2003.¹⁵ Galaxy notes that while conducting the later testing, WCLF went off the air and that its technicians were able to obtain only two readings that were consistent with the April 8th readings that showed that WCLF failed to deliver a good quality signal to Galaxy's Nobleton headend.¹⁶ Galaxy maintains that it is a hardship to such a small system to continue to measure a signal that on three different occasions has failed to meet the Commission's minimum signal strength threshold.¹⁷ Galaxy asserts that the reason WCLF does not make a commitment to deliver a good quality signal to the Nobleton headend is because it cannot do so.¹⁸

5. In reply, WCLF reiterates its argument that Galaxy's signal strength measurements are incomplete, flawed and unreliable.¹⁹ WCLF maintains that Galaxy's signal strength readings taken at 10:17 and 11:15 a.m. on April 15, 2003 are not reliable because the measurements were taken while the Station was broadcasting at reduced power level due to technical difficulties involving its transmitter.²⁰ WCLF contends that, because the Station was off the air from approximately 12:25 p.m. on April 15 to shortly before midnight on April 17, 2003, Galaxy was unable to complete the 24-hour test it was required to conduct based on the April 8, 2003 signal strength readings.²¹ WCLF maintains that after it resumed operations on April 17, 2003, Galaxy cannot be excused from its obligation to measure its signal using good engineering practices.²²

6. Commercial television broadcast stations, such as WCLF, are entitled to carriage on cable systems located in the same DMA. Cable operators, on the other hand, have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.²³ One method of doing so is for a cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.²⁴ Galaxy has failed to meet this burden. A cable operator's burden of showing the inadequacy of a station's signal is not satisfied by studies conducted while the station is not operating at full power or is not broadcasting. Such studies are useless because they do not provide information that will assist broadcasters to determine whether they wish to pay for appropriate signal improvements nor do they represent full cooperation by cable operators in supplying broadcasters with relevant data, as contemplated by the Commission in connection with the resolution of disputes regarding the adequacy of signal levels delivered to cable system headends.²⁵ However, stations, such as WCLF, bear some

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 3 and Exhibit B.

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 3.

¹⁹ Reply at 1.

²⁰ *Id.* at 2-3.

²¹ *Id.* 3-4.

²² *Id.* at 4.

²³ See *Must Carry Order*, 8 FCC Rcd at 2990.

²⁴ 47 C.F.R. § 76.55(c)(3).

²⁵ *Must Carry Order*, 8 FCC Rcd at 2991.

responsibility for informing cable operators when a station will be off the air or operating at reduced power when a carriage complaint has been initiated. Based on foregoing, we find that WCLF is entitled to mandatory carriage on Galaxy's cable system serving the Tampa-St. Petersburg-Sarasota DMA. This grant, however, does not exempt WCLF from its obligation to either deliver a good quality over-the-air signal or acquire and install, at the Station's expense, any and all improvements and equipment that might be necessary to provide Galaxy's Nobleton Florida headend with a good signal quality.

IV. ORDERING CLAUSES

Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by Christian Television Network, Inc., licensee of television broadcast station WCLF-TV, Clearwater, Florida against Galaxy Cable Inc. **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that Galaxy Cable, Inc. **SHALL COMMENCE CARRIAGE** of the WCLF signal on its cable system serving the Tampa-St. Petersburg-Sarasota, Florida DMA, within sixty (60) days after WCLF delivers a good quality signal to Galaxy's Nobleton principal headend.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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²⁶47 C.F.R. § 0.283.